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No. 847

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1968

PEOPLE OF THE STATE OF ILLINOIS EX REL. WILLIAM I. LANDWER,

Petitioner,

vs.

VILLAGE OF NORTH BARRINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above case on September 23, 1968.

OPINIONS BELOW

The Supreme Court of Illinois did not render an opinion. The opinion of the Illinois Appellate Court for the Second Judicial District is reported at 94 Ill. App. 2d 265. The opinion of the Circuit Court of Illinois for the Nineteenth Judicial Circuit, Lake County, Illinois, is unreported. A copy of the Circuit Court opinion is appended hereto in Appendix A at p. 1.

JURISDICTION

The judgment of the Supreme Court of Illinois was made and entered on September 23, 1968. The Judgment of the Illinois Appellate Court, Second Judicial District, was made and entered on April 4, 1968 and the petition for rehearing was denied June 19, 1968. The jurisdiction of this Court is invoked under U.S.C.A., Title 28, Sec. 1257(3).

QUESTION PRESENTED

The question presented in this case is whether the principles of fair notice laid down by this Court in *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950), and reiterated in *Walker* v. *City of Hutchinson*, 352 U.S. 112 (1956), and *Schroeder* v. *City of New York*, 371 U.S. 203 (1962), apply to a judicial proceeding that is a necessary step before landowners seeking annexation to a municipality can include in the annexation proposal the land of owners not joining in the annexation petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. U. S. Const., Amend. XIV, Sec. 1:

   "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

2. Ill. Rev. Stat. Ch. 24, §§ 7-1-1 through 7-1-4, and 7-1-7, which are set forth in Appendix I at pp. 22 through 27.

STATEMENT

William Landwer, your petitioner, is the owner of a tract of 160 acres of land which is the North East quarter of Section 22, Township of Cuba, Lake County, Illinois (R. 291-292). This land is unimproved and used for farming. At all relevant times no one lived on the land. (R. 308).

Mr. Landwer resides at 320 Oak Knoll, Barrington, Illinois, about 1¾ miles south of the tract (R. 316). His home and business addresses are both in Barrington. They are both listed in the Northwest section of the Barrington telephone book where North Barrington Telephone numbers are also listed (R. 69). He is the record owner of the tract and the Cuba Township assessment records show that the property is assessed to William Landwer, 320 Oak Knoll, Barrington, Illinois (R. 161).

Prior to October 17, 1963, the entire 160 acres was unincorporated. The eastern edge of the property was located approximately ⅔ of a mile from the then boundary of the Village of North Barrington. When the Cuba Township Assessment Rolls for 1964 were published in the Barrington Courier Review, on September 3, 1964, Mr. Landwer learned for the first time that a strip of his property 300 feet wide and 2,640 feet long, containing 18.2 acres and bisecting the quarter section, had been annexed to the Village of North Barrington (R. 298). Investigation disclosed the following facts. At some time prior to September 19, 1963, Mr. William Braithwaite, who was village attorney for the Village of North Barrington, prepared a petition for the annexation of an irregular twenty-sided polygon of property with a square hole in the middle. A map of this area appears in the opinion of the Circuit Court, appended to this petition as Appendix A at p.

12. The property included in the petition consisted of five parcels owned by five persons who, together with their wives, signed the petition, and four parcels owned by non-signers. The land of the signers was generally west and southwest of the village, but not contiguous to its boundaries. The necessary contiguity was achieved by including in the proposal an L-shaped corridor through a larger parcel of land. To the west the area annexed continued in a 300 foot corridor through the middle of a parcel owned by a Mr. Mehlman and through the quarter section owned by your petitioner, ending in a two and one half acre open field owned by Quaker Oats Co. Though at the time Mr. Mehlman lived on his property the corridor did not include his home. (R. 63).

The annexation petition was filed on September 19, 1963. The Illinois statute requires that notice of a hearing on such a petition shall be given not more than thirty nor less than fifteen days before the date of the hearing (Ill.Rev.Stat., Ch. 24, § 7-1-2), and that such notice "shall be given by publishing a notice thereof in one or more newspapers published in the annexing municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the annexing municipality and territory." (*Id.*) There are no newspapers published in the Village of North Barrington. In Cuba Township the Barrington Courier Review, published in the Village of Barrington, had a circulation of approximately 4,000. (R. 74). Seven out of ten of the signers of the annexation petition were subscribers to this paper. (R. 20, 42, 97, 103, 115, 117, 120, 125, 128, 163). The Frontier Enterprise, published in Lake Zurich in adjoining Ela Township, had a circulation in Cuba Township estimated at between 75 and 150 (R. 86). None of the signers of the annexation petition subscribed to it. (R. 35,

43-4, 97, 103, 115, 117, 120, 125-6, 128, 164), though some of the signers testified that they purchased it at various times on the newsstand. Neither Mr. Landwer (R. 309), nor Mr. Mehlman (R. 64), had ever heard of the Frontier Enterprise.

The only notice of the proceeding on the petition was published once in the Frontier Enterprise on September 26, 1963. This notice identified by lot number two of the five parcels belonging to the signers, and described separately one portion of the corridor extending from the signers' property to the village line. The remainder of that corridor, the parcels owned by three of the signers, the three hundred foot corridor that cut through the land of Mr. Mehlman and through the land of your petitioner, and the two and a half acre field owned by the Quaker Oats Co., were described by metes and bounds in a single paragraph of nearly six hundred words. (R. C40 through C43). No personal notice was given to any of the non-signers except Quaker Oats who were personally informed. No one informed either your petitioner or Mr. Mehlman (R. 301, 66). Two signers of the annexation petition testified to the effect that they did not know who talked with Quaker Oats (R. 17, 178) but that Quaker Oats agreed not to object. (R. 16, 17). Quaker Oats was the perimeter owner, and under the Illinois statute, the owner of land located on the perimeter of a proposed annexation, the exclusion of which will not destroy contiguity, may have his land excluded by petitioning the court at the hearing on the annexation petition (Ill. Rev. Stat. Ch. 24, Sec. 7-1-3 (4), 7-1-4).

When he was made aware of the annexation through the publication in the Barrington Courier Review of the 1964 tax assessment roll, your petitioner filed the petition

for leave to file a quo warranto challenging the validity of the annexation on the ground that he had not been given notice under the Illinois statute and under the requirements of due process as explained by this Court in *Mullane, City of Hutchinson,* and *Schroeder.* The constitutional question was raised in the pleadings (R. C104), and at the trial (R. 9).

The Circuit Court found that the notice given was neither calculated to reach the non-signers, or if it reached them, calculated to inform them that their property was included, and issued an order of ouster (R. C188 through C200). On appeal the Illinois Appellate Court reversed and denied a petition for rehearing. The Supreme Court of Illinois denied leave to appeal.

WHY THE WRIT SHOULD BE GRANTED

The writ should be granted in this case to correct what your petitioner submits is an erroneous application of the broad dictum in *Hunter* v. *Pittsburgh,* 207 U.S. 161 (1909) to permit a self-defined group of landowners, sworn to no public duty and serving no interest but their own, to initiate and prosecute a judicial proceeding that will fix within the boundaries of a proposed annexation to a village of their choice such land of their neighbors as they see fit to include, without serving notice that meets the standard of minimum fairness worked out by this Court in *Mullane* and the cases that have followed it.

The question is of great public importance, for it arises in the context of a rapidly growing suburban area in which there exists considerable tension between the owners of undeveloped land who are anxious to realize upon their investment and some residents who seek to preserve the exclusiveness of their areas by imposing large minimum lot restrictions such as the five acre minimum that forms a backdrop to this case. These restrictions are often enforced and extended by the organization of municipal corporations and the manipulation of their boundaries. These corporations very frequently perform a minimum function in terms of services and are sometimes referred to as "zoning villages." The possible abuses of such a system absent a requirement of fair notice are apparent and well illustrated by the record in the case below. The statute at the time of the filing of the annexation petition in the case below required that the petition be signed by (1) a majority of the property owners, (2) a majority of the electors resident in the area, and (3) the owners of a majority of the property in the area to be annexed. But re-

lating these requirements to the methods by which the annexation below was planned and executed, these trappings of democracy disappear. As to property owners, the petitioners, by eliminating a lot in the center of their area, were able to exercise control of their total number minus one. As to electors, while we have no testimony about the number of electors residing in the residences of the owners of the corridors to the east and west of the properties of the signers of the annexation petition, it is plain that the corridors were carved through the owner's land in a fashion that eliminated their homes. As to a majority of the acreage, by taking narrow corridors effective control over the future subdivision of a Parcel half a mile square has been accomplished by the owners of a small fraction of that much land.

This case is a far cry from *Hunter* v. *Pittsburgh*. In that case the Court was dealing with a consolidation of two populous municipalities pursuant to a special statute adopted by the general assembly, and after an election that was held in the area comprising both cities. Such an election on such an issue is notorious enough so that ordinarily the notice problem does not arise. Further, since the *Hunter* case came to the Court on writ of error from the judicial proceeding calling the election, there was no problem as to actual notice to the appellants. All of them had been parties to the proceeding below.

Furthermore, when, as in the *Hunter* case the decision is left to the vote of the people, the function of notice is to encourage public discussion and participation. In the case below, by contrast, if the landowner is deprived of notice of the hearing on the petition, the decision to include his land in the proposal submitted to the village will be left wholly to his neighbors who may very well have interests

antithetical to his own. If it be said that his interests are protected by the village board which ultimately must accept the annexation, it is enough to point out that as a practical matter notice of the hearing on the petition is the key to an awareness of any subsequent steps. In the case below, for example, once the county court had referred the petition to the village authorities, they received approval of the planning commission, prepared the ordinance, convened a special meeting of the village board, and adopted the annexation—all within the span of three days.

Finally, the alternative holding of the Illinois Appellate Court that the availability of the quo warranto remedy takes the hearing on the petition out of the *Mullane* doctrine is, your petitioner submits, unsound. The availability of quo warranto limits the area of proof very materially. In the first place the defendant becomes the village rather than the signers, limiting the range of examination of the annexation petitioners. In the second place, in the proceeding below the judge held that facts established in the hearing on the petition could not be attacked in the quo warranto proceeding. (R. 107).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

EVA SCHWARTZMAN
Attorney for Petitioner

APPENDIX

APPENDIX A

OPINION

This is a petition for leave to file a Complaint in QUO WARRANTO by William I. Landwer. Landwer is the owner of the following described real estate:

> The North East Quarter of Section 22, Township 43 North, Range 9 East of the 3rd P.M., in Lake County, Illinois. (Containing 160 acres.)

A strip or corridor of his land 300 feet wide and 2640 feet long, bisecting and cutting through the entire quarter section of his land, above described, containing 18.2 acres (see "Exhibit 1" attached) was included in a petition to annex certain property to the defendant Village, which was filed September 19, 1963 in the then County Court of Lake County, Notice of the proceeding to be held with regard to the petition was published in the Frontier Enterprise, a weekly newspaper published in the Village of Lake Zurich.

On October 14, 1963, a hearing was held before the County Court and no objectors appeared at that time. The Court ordered the question of the annexation of this property to be submitted to the defendant Village authorities, and on October 17, 1963, at a special meeting, the Trustees of the defendant Village approved the annexation by Ordinance No. 52 by a vote of 5 to 0. One Trustee being absent. (Exhibit "1" shows the property covered by Ordinance 52).

At the conclusion of three days of taking testimony before the Court, Landwer asked leave of Court to file "Count

II of Second Amended Petition for leave to file Complaint in Quo Warranto" to conform to the proof, and the Court reserved its ruling on said Motion. "Count II" challenges the validity of the Special Meeting held, at which meeting Annexation Ordinance 52 was passed. *The Court will grant Landwer's Motion,* although the Court does not deem it necessary to decide the issues raised by "Count II" in order to dispose of this case.

Landwer challenges this Annexation on several grounds. He first charges that the Frontier Enterprise is not a newspaper of general circulation in the Village of North Barrington and in the territory sought to be annexed as required by Chapter 24, Section 7-1-2 Ill. Rev. Stat.

From the testimony in the case, The Court finds that the Frontier Enterprise has a very limited circulation in the Village of North Barrington and with almost no circulation in the territory sought to be annexed. However, under the doctrine of Illinois Case law, the Court finds that the Frontier Enterprise was a newspaper of general circulation in the "Annexing Village and territory" within the meaning of the Illinois statute. In *People* v. *110 S. Dearborn St. Corp.,* 372 Ill. 459, the Court stated that "by the use of the words general circulation, the legislature intended that of a general newspaper as distinguished from one of a special or limited character; a newspaper that circulates among all classes or calling in the community." The Courts have liberally permitted papers of seemingly limited circulation to be included within the term "general circulation" and on the facts of this case, the Frontier Enterprise falls within this classification.

Basically this controversy questions the sufficiency of the notice given to the land owners that their property was being annexed to the defendant Village. The only notice

given Landwer of this annexation was by publication in one local newspaper in strict compliance with the minimum requirements of the Illinois Municipal Code (Section 7-1-2):

> "The petitioners * * * shall give notice of the annexation petition * * * . This notice shall * * * give the substance thereof, including a description of the territory to be annexed * * * This notice shall be given by publishing a notice thereof at least once in *one or more newspapers* with a general circulation within the annexing municipality and territory."

Thus the only notice given was by a newspaper publication setting forth that a petition had been filed; a legal description of the territory proposed to be annexed as being Parcels "A", "B", "C" and "D", and the name of one of the petitioners. Part of Landwers' property was included in a long, complicated and confusing description designated in the notice as Parcel "B". Parcel "B" included a description of land of all the property owners, except McKee and Block. (See Exhibit "1".)

It is extremely doubtful that even if Landwer, Melrose, Mehlman or the Quaker Oats Co. (The only property owners who were included in the petition who were not signers) had read this notice they would have been aware that their property was included without the aid of a map and the help of an expert trained in deciphering legal descriptions.

Thus the proceedings here would indicate on the face that the statute has been fully complied with, but actually the compliance was accomplished in such a manner as to deprive certain persons of the notice contemplated by the statute and contrary to the spirit of the statute. One strong indication of this is the omission of Lot 6 in Cherry Hills Subdivision, which left an island completely surrounded by the annexation, and perhaps the further omis-

sions of Lots 2, 3, 4 and 8 of Cherry Hills Subdivision, which lots lie adjacent to the McKee and Block property. (See Exhibit "1") The likelihood of Landwer learning of the purported annexation would have increased had any of these lot owners been included and objected.

In this case the statutory purpose of notice was to inform Landwer, Melrose, Mehlman and the Quaker Oats Co., the only non-signers of the petition to annex, that a portion of their property was going to be annexed to the defendant Village.

In what respects did the petitioners not comply with the spirit and intent of the statute: *First,* the notice was published once in only one newspaper with a very limited circulation in the Village and almost no circulation in the territory to be annexed, and this the petitioners knew or their attorney knew or should have known as attorney for and director and officer of the Frontier Enterprise. The attorney for the petitioners knew by reason of his role as Village Attorney for the Village of North Barrington, that all legal publications of the Village were published in the Barrington Courier Review, which newspaper had a much wider circulation in the area. Under such circumstances, the spirit of the statute would seem to call for compliance with wording of the statute of the giving of notice in "one or more newspapers"; *Second,* the 10 persons who signed the petition were all residents of the area to be annexed. They or their attorney knew that the 4 land owners included in the petition who had not signed the petition were not residents of the territory sought to be annexed. The petitioners, their attorney and the President of the Village never personally or by letter even informed these non-petitioning owners, except Quaker Oats Co., of the proposed annexation. Petitioner McKee saw Landwer frequently, played golf with him, knew Landwers' property was included but never informed him of the

annexation, nor asked him to sign the petition. The addresses and whereabouts of the non-petitioning owners were known to petitioners and their attorney, and if not known were easily obtainable. It, therefore, would have been relatively simple to inform the 3 non-petitioning owners; *Third,* the description of the territory in the notice cannot be said to be such as to inform the four non-petitioning land owners, and in particular Landwer, that their property was being annexed.

So taking all of this into consideration, together with the other evidence, in this case, it is apparent to the Court that there was a deliberate effort on the part of the petitioners, the President of the Village, and the attorney for the petitioners and the Village to comply with the letter of the law, but to do so in a manner that the possibility of the non-petitioning land owners reading the notice would be very remote, or if they did read it, understanding that their property was included.

The notice intended by the statute is one *reasonably calculated under all the circumstances to apprise interested parties* of the pendency of the action, and must be of such nature as reasonably to convey the required information to the owner that his property is being annexed. This interpretation of the requirements of the notice provisions of the statute is evident from a reading of the other sections of the statute which would have required the consent of Landwer if the defendant Village had attempted this annexation by Ordinance. Furthermore, this interpretation is in compliance with the requirements of due process. (See *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 Supreme Court Reports 652.)

The statutory notice given in this case is inadequate and fails to meet the statutory intent of such notice not because it fails to notify Landwer, but because under the

circumstances it is not reasonably calculated to reach him or to inform him that his property is to be annexed.

Therefore this Court holds that the notice published in the Frontier Enterprise was void and of no effect as to the Plaintiff Landwer.

Landwer also contends that conduct of the annexing parties and the defendant Village amounts to fraud on Landwer and the Court under the decision of *In Re Petition to Annex Certain Territory to Village of Willowbrook, Du Page County,* 37 Ill. App. 2nd 393. However the Court deems it unnecessary to decide this issue to dispose of this case, and hence makes no decision with respect to this matter.

This Court recognizes that:

> The granting or withholding leave to file an information (in quo Warranto) rests in the sound discretion of the court. If the facts shown by respondents . . . are disputed or if the answer presents new and doubtful questions . . . the court may make the rule for the information absolute. *People* v. *France,* 314 Ill. 51 (1924).

Petitioner has complied with the other statutory requirements necessary for a quo warranto proceeding. He is a party in interest in this question and has requested the Attorney General of the State of Illinois and the State's Attorney of Lake County to bring a quo warranto proceeding but both have refused.

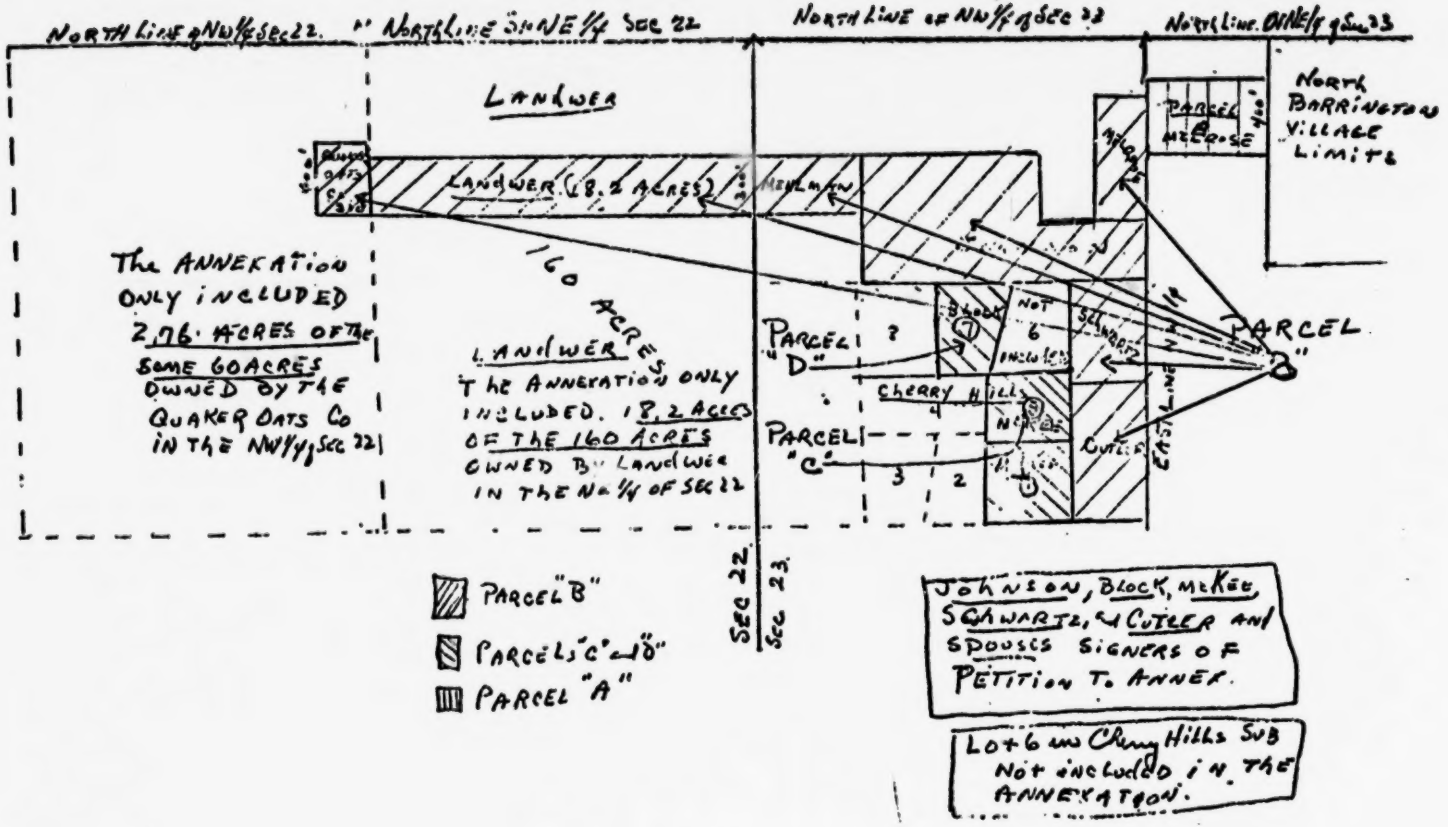
Therefore, for the foregoing reasons, leave is granted to petitioner William I. Landwer to file a complaint in quo warranto. Counsel will present a proper Order.

ENTER:

Philip W. Yager
JUDGE

February 14, 1967.

"Exhibit 1"


NORTH LINE OF NW¼ SEC 22.
NORTH LINE SW NE¼ SEC 22
NORTH LINE OF NW¼ SEC 23
NORTH LINE OF NE¼ SEC 23
LANDWER
LANDWER (18.2 ACRES)
160 ACRES
NORTH BARRINGTON VILLAGE LIMITS
PARCEL "A"
PARCEL "D"
PARCEL "C"
CHERRY HILL
CUTLER
EAST LINE
The ANNEXATION ONLY INCLUDED 2.76 ACRES OF THE SAME 60 ACRES OWNED BY THE QUAKER OATS CO IN THE NW¼ SEC 22
LANDWER
THE ANNEXATION ONLY INCLUDED 18.2 ACRES OF THE 160 ACRES OWNED BY LANDWER IN THE NW¼ OF SEC 22
PARCEL "B"
PARCELS "C" AND "D"
PARCEL "A"
SEC 22.
SEC 23.
JOHNSON, BLOCK, McKEE SCHWARTZ, & CUTLER AND SPOUSES SIGNERS OF PETITION TO ANNEX.
LOT 6 IN CHERRY HILLS SUB NOT INCLUDED IN THE ANNEXATION.

App. 7

APPENDIX B

JUDGMENT ORDER OF OUSTER

This cause coming on regularly to be heard upon the petition of William I. Landwer, Relator herein, for leave to file a complaint in *Quo Warranto* against the Village of North Barrington, defendant herein, and it appearing to the Court that due notice of the presentation of said petition was served upon the Attorney General of the State of Illinois, the State's Attorney in and for the County of Lake and the State of Illinois, and upon the Village of North Barrington, and that the petitioner made written request of the Attorney General to file said complaint in *Quo Warranto* but that said request was refused, and that the petitioner made written request of the State's Attorney in and for the County of Lake and State of Illinois to file said complaint, but that said request was refused; and this cause coming on to be heard on the Second Amended Petition of Relator for Leave to File Complaint, leave having heretofore been granted to file said Second Amended Petition, and on the Answer of the defendant thereto, and the Relator appearing by his attorney, Eva Schwartzman, and the defendant appearing by its attorneys, King, Robin, Gale & Pillinger, and Snyder, Clarke, Dalziel, Holmquist & Johnson, and the Relator being present in open court in person and by his attorney aforesaid, and defendant being present in open court by C. R. Anderson, its President, and by its attorneys aforesaid; and the Court having heard the testimony of various witnesses duly sworn and examined in open court, and other evidence offered by Relator in support of the allegations and charges contained in said Second Amended Petition and by defendant in support of its Answer to said Second Amended Petition, and the said Relator having

asked leave of Court at the conclusion of the hearing to file Count II of said Second Amended Petition to conform to the proof offered at said hearing, and defendant having objected to the granting of leave to Relator to file said Count II to conform to the proof offered at the said hearing, as stated in the Court's Opinion, hereinafter designated as Exhibit A, and the Court having re-considered and amended its Opinion upon defendant's objections and having denied leave to file Count II, and the Court having considered all the evidence offered, and being fully advised in the premises,

FINDS AS FOLLOWS:

A. That it has jurisdiction of the parties hereto and of the subject matter hereof.

B. That the Opinion of the Court, heretofore filed herein on February 14, 1967, is incorporated herein, attached to and made a part hereof as Exhibit A and is adopted *in toto*, as amended, as the findings of the Court herein.

C. That the issues are with and in favor of the Plaintiff and against the Defendant.

D. That there is no genuine issue as to any material fact and that all the basic, pertinent facts are before the Court and there is no need for further proceedings herein.

E. That the Village of North Barrington attempted by virtue of purported Annexation Ordinance No. 52, purportedly adopted October 17, 1963 and recorded October 25, 1963 as Document No. 1205178 in the Lake County Recorder's Office, to annex a strip or corridor of land, 300 feet wide and 2640 feet long, approximately 18.2 acres in area, bisecting and cutting through the following real property belonging to Relator William I. Landwer:

The North East Quarter of Section 22, Township 43 North, Range 9, East of the 3rd P.M., in Lake County, Illinois (containing 160 acres).

That the aforesaid strip or corridor is further identified on a map attached to the aforesaid Document 1205178.

F. That the purported annexation of the aforedescribed strip or corridor is invalid, void and of no legal effect.

G. That the Village of North Barrington is guilty of usurping powers as alleged in the aforesaid Second Amended Petition by attempting, without any warrant or authority whatsoever, to exert jurisdiction over the aforesaid strip or corridor of land.

H. That defendant Village of North Barrington should be ousted from the aforesaid strip or corridor of land and should be prohibited from exercising municipal franchises, functions, authority and powers, performing duties and receiving the prerogatives thereof, in the said strip or corridor of land.

I. That plaintiff is entitled to a Summary Judgment of Ouster against the defendant, Village of North Barrington, ousting the defendant from exerting jurisdiction and authority over the aforesaid strip or corridor of land and prohibiting the defendant from exercising municipal franchises, functions, authority and powers, performing duties and receiving the prerogatives thereof, in the said strip or corridor of land.

J. That the Recorder of the County of Lake should be directed to expunge from his records purported Annexation Ordinance No. 52 of defendant Village of North Barrington, recorded as Document No. 1205178 on October 25, 1963 insofar as the same affects the aforesaid strip or corridor of land.

Wherefore, It Is Ordered, Adjudged and Decreed that leave be and hereby is denied to plaintiff to file Count II

of the Second Amended Petition to conform to the proof presented, and

It Is Further Ordered, Adjudged and Decreed that the defendant, Village of North Barrington, be and it is hereby ousted from exercising jurisdiction and authority over, and prohibited from exercising municipal franchises, functions, authority and powers, performing duties and receiving the prerogatives thereof, in and to the following described property:

> That strip or corridor of land 300 feet wide and 2640 feet long, bisecting and cutting through the North East Quarter of Section 22, Township 43 North, Range 9, East of the 3rd P.M., in Lake County, Illinois attempted to be annexed to the Village of North Barrington by purported Annexation Ordinance No. 52, recorded in the Lake County Recorder's Office as Document No. 1205178 on October 25, 1963

and

It Is Further Ordered, Adjudged and Decreed that the Recorder of Lake County be and he hereby is directed to expunge from his records purported Annexation Ordinance No. 52 of the Village of North Barrington, recorded as Document No. 1205178 on October 25, 1963, insofar as the same affects the aforesaid strip or corridor of land; and

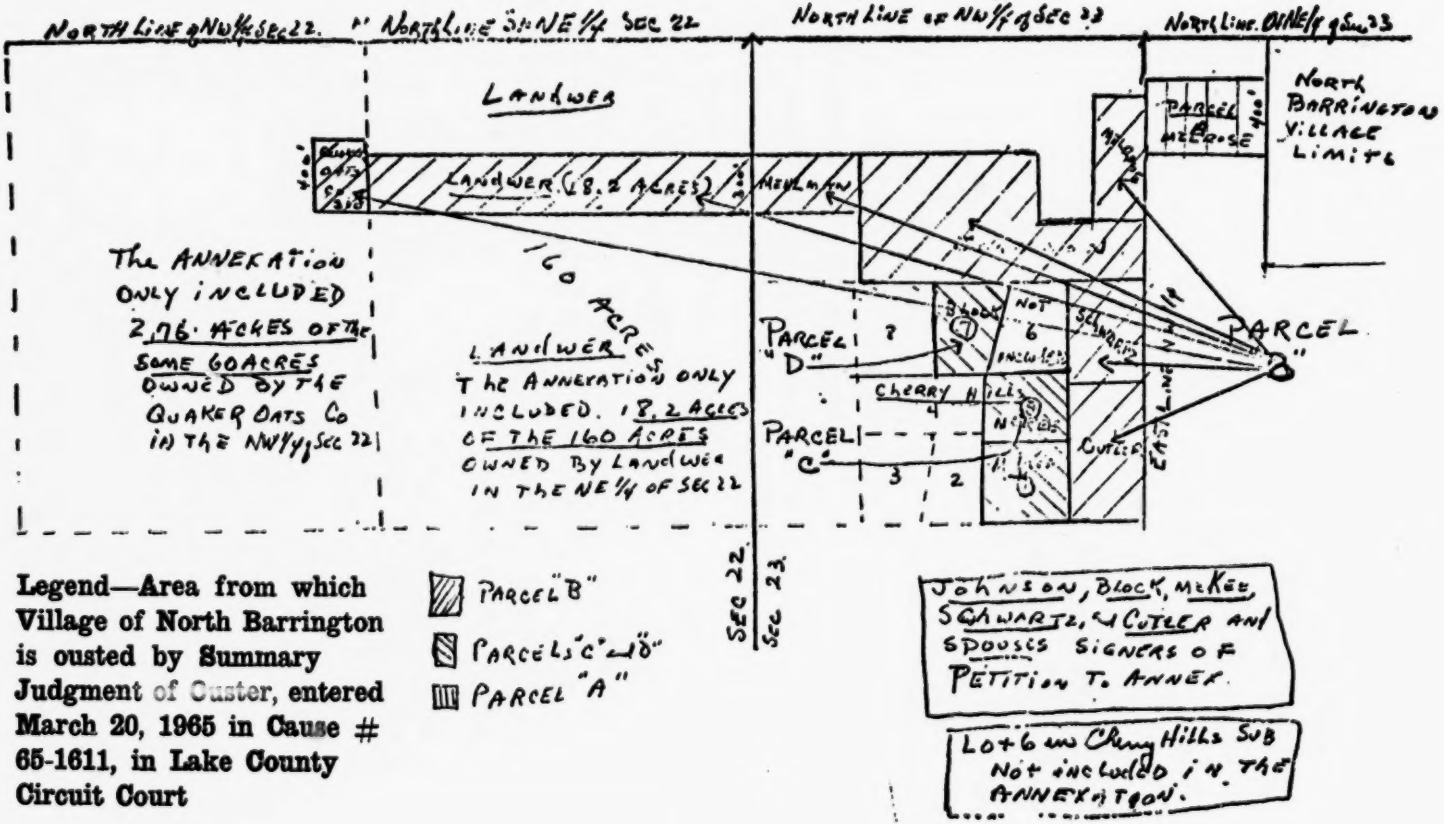
It Is Further Ordered, Adjudged and Decreed that the Relator, William I. Landwer, do have and recover of and from the defendant his costs by him in and about this suit expended, and that execution issue therefor; and

It Is Further Ordered, Adjudged and Decreed that there is no just reason for delaying enforcement or appeal.

Dated: March 20, 1967

ENTER:	Endorsed:
Philip W. Yager	"Filed Mar. 20, '67
JUDGE	"Stephanie Sulthin, Clerk."

"Exhibit 1"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PARCEL "C"
PARCEL "B"
CHERRY HILLS
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NOT INCLUDED
SEC 22
SEC 23
EAST LINE
CUTLER
JOHNSON, BLOCK, McKEE, SCHWARTZ, & CUTLER AND SPOUSES SIGNERS OF PETITION TO ANNEX.
LOT 6 IN CHERRY HILLS SUB NOT INCLUDED IN THE ANNEXATION.

Legend—Area from which Village of North Barrington is ousted by Summary Judgment of Custer, entered March 20, 1965 in Cause # 65-1611, in Lake County Circuit Court

PARCEL "B"

PARCELS "C" & "D"

PARCEL "A"

APPENDIX C

MR. JUSTICE MORAN

DELIVERED THE OPINION OF THE COURT:

In September, 1963, a petition was filed in the then County Court of Lake County seeking the annexation of certain territory to the Village of North Barrington. Notice of the filing and the date of hearing was published in the Frontier Enterprise, a newspaper published in Lake Zurich, Illinois. No objections were filed and the county judge entered an order referring the matter to the corporate authorities of the Village for consideration of the question. The corporate authorities subsequently annexed the property.

In April, 1965, the plaintiff, after making a demand upon the Attorney General of Illinois and the State's Attorney of Lake County and being refused, filed this petition seeking leave to file an action in Quo Warranto challenging the validity of the annexation.

The trial court granted leave to file the petition and, subsequently, entered a judgment of ouster. The Village brings this appeal raising various points which will be discussed in turn.

The property in question consists of various tracts, some of which are connected by that owned by the plaintiff, containing 160 acres. However, only some 18.2 acres of plaintiff's land were included in the annexation. That part of the plaintiff's property which is included in the annexation is a strip measuring 2640 feet long and 300 feet wide. The tract is vacant and apparently devoted to farming purposes.

The first and principal issue raised by this appeal is whether or not the notice published in the Frontier Enterprise was valid so as to vest jurisdiction in the then County

Court. It is conceded that no newspaper is published in the municipality. The statute, in effect at the time, provided "This notice shall be given by publishing a notice thereof at least once in one or more newspapers published in the annexing municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the annexing municipality and territory". (Ill. Rev. Stat. 1963, Ch. 24, Sec. 7-1-2).

A good deal of the argument is directed to the question of whether or not the Frontier Enterprise is a newspaper of general circulation in the annexing municipality and the territory. The trial judge found, in his opinion " . . . that the Frontier Enterprise was a newspaper of general circulation in the 'Annexing Village and territory' within the meaning of the Illinois statute", but went on to state that even though there had been technical compliance with the statute, it was the intention of the Legislature that the notice given be one that was calculated to reach the parties interested in the matter. The court further held that this interpretation was in compliance with the requirements of due process, citing the case of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950). In this connection, the court said: "The statutory notice given in this case is inadequate and fails to meet the statutory intent of such notice not because it failed to notify Landwer, but because under the circumstances it is not reasonably calculated to reach him or to inform him that his property is to be annexed".

The court has thus read into the statute a requirement that the notice not only meet the technical provisions, but that the notice also be reasonably calculated to reach the parties in interest, and concluded that this requirement was based upon the due process provisions of the Federal Constitution.

A proper consideration of this matter requires us to examine the nature of municipalities and their boundaries and the relationship between municipal boundary changes and the guarantees set forth in the Federal Constitution, if, indeed, there is any relationship between the two.

It is fundamental that municipalities are creatures of the Legislature and entirely subject to the legislative will. In the case of *Hunter* v. *Pittsburgh,* 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151 (1907), the United States Supreme Court said at pages 177-179: " . . . This court has many times had occasion to consider and decide the nature of municipal corporations, their rights and duties, and the rights of their citizens and creditors . . . (Citations omitted). We think the following principles have been established by them and have become settled doctrines of this court to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them . . . the number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provisions of the Constitution of the United States. Although

the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences."

The Court has followed this doctrine in many cases, among them *Reynolds* v. *Sims,* 377 U.S. 533, 575, 84 S. Ct. 1362, 12 L.Ed. 2d 506 (1964). An exception to this rule is found in those cases where the state uses its power of municipal boundaries to circumvent a Federally protected right, such as the gerrymandering of voting districts so as to discriminate against negro voters, as was the case in *Gomillion* v. *Lightfoot,* 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960). However, there is no such "Federally protected right" in this case.

The Illinois Supreme Court has taken the same position in the case of School Districts and other municipal corporations. In the case of *The People* v. *Deatherage,* 401 Ill. 25 (1948), the Court said, at page 31: "A community unit school district, like any other school district established under enabling legislation, is entirely subject to the will of the legislature thereafter. With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies. The State may hold or manage the facilities directly or indirectly. The area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district, and the district may be abolished. All this at the will of the legislature."

The Illinois Supreme Court has consistently adhered to this rule. Indeed, it recently said "These are no longer fairly debatable constitutional questions." *Bd. of Ed.* v. *School Dist. No. 61,* 32 Ill. 2d 342, 344 (1965).

If the Legislature can change municipal boundaries without any notice or hearing, without consent, and even against the protests of the inhabitants, and still not violate any constitutional provision, then it follows that the Legislature may prescribe the notice that is to be given in making a boundary change.

In this case, the Legislature has clearly provided for one notice to be published in a newspaper having a general circulation in the annexing municipality and the territory. The trial judge specifically found that the newspaper in question and the notice given, complied with the statute. There is no requirement that personal notice be given and we cannot go beyond the legislative directive. The trial judge was in error in requiring more notice than that required by statute.

It may well be that additional notice should be required and, within the foregoing authorities, the Legislature had every right to require further notice and even consent. The simple fact is that it has not done so. A petition for more or better notice must necessarily be addressed to the Legislature and not to the Courts.

The trial court relied upon the case of *Mullane* v. *Central Hanover Bank & Trust Co., supra.* That case involved published notice to beneficiaries of a trust of the final proceedings to determine an accounting on their behalf. The proceedings were final and, of course, that is not true in this case; witness, this action of Quo Warranto being brought some 18 months after the original annexation proceedings became final. In addition to that, a change in

municipal boundaries, as we have noted, is uniquely and entirely subject to the legislative will and not subject to any constitutional protection or restraint, absent the violation of a "Federally protected" right.

Since we have determined to reverse and remand the case, we will consider additional points raised by the plaintiff on appeal in support of the order of the trial court. The plaintiff alleged that there was a deliberate scheme by the petitioners and their attorneys to comply with the statute but to do so in a manner contrary to the spirit of the statute and so as to constitute a fraud upon the court and the plaintiff. In support of this contention, the plaintiff cites the case of *In re Petition To Annex Certain Territory,* 37 Ill. App. 2d 393 (1962), as authority for the proposition that a fraud has been practiced. It is sufficient to say that this issue was never adjudicated. As a matter of fact, the trial court in its memorandum of decision, which was made a part of the order entered, expressly excepted this claim in arriving at its conclusion when it stated, "However, the Court deems it unnecessary to decide this issue (fraud) to dispose of the case, and hence makes no decision with respect to this matter."

The last issue raised by the plaintiff is that the ordinance of annexation was adopted at a special meeting of the board of trustees. This issue was not raised until after the proofs were closed, whereupon the plaintiff asked leave to file Count II of his Second Amended Petition. The trial court originally granted leave but subsequently changed his view and denied leave to file Count II of the Second Amended Petition. There was no cross-appeal from this order and so the matter is not properly before us.

In conclusion it appears to us from the memorandum decision that there was a fundamental misunderstanding of the nature of municipalities and their boundaries. Mu-

nicipalities are mere creatures of the Legislature, created for convenience in the handling of day to day local problems. The Legislature has complete authority over them and may change them from time to time; it may expand, contract or even abolish them, with or without notice, consent, and even against the protests of persons interested in the matter, all without transgressing any constitutional provisions. It follows that, if the petitioners for annexation comply with the technical requirements of the statute, then the court must uphold the annexation.

The Legislature has the power to provide more and perhaps better notice; it has the power to grant home rule to municipalities so that these matters may be decided locally. It has not done so.

The judgment is therefore reversed and the case remanded to the trial court with instructions to dismiss the petition.

REVERSED AND REMANDED
WITH INSTRUCTIONS

ABRAHAMSON, P. J. and DAVIS, J. — CONCUR

APPENDIX D

Howard K. Kellett
clerk
312-695-3750

STATE OF ILLINOIS
APPELLATE COURT SECOND DISTRICT

Elgin, Illinois 60120

June 19, 1968

General No. 67-101

THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

People of the State of Illinois, ex rel William I. Landwer,

vs.

Village of North Barrington, A Municipal Corporation

Petition for rehearing denied.

Howard K. Kellett
Clerk

King, Robin, Gale & Pillinger
135 S. LaSalle St.
Chicago, Illinois
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301 Washington St.
Waukegan, Illinois
Eva Schwartzman
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APPENDIX E

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

CLELL L. WOODS
CLERK

September 23, 1968

TELEPHONE
AREA CODE 217
525-2035

Mrs. Eva Schwartzman
Attorney at Law
350 North Milwaukee
Libertyville, Illinois

Dear Mrs. Schwartzman:

In Supreme Court today, in Case No. 41537 entitled:

People ex rel. William I. Landwer,
Petitioner

vs.

Village of North Barrington, a municipal corporation,
Respondent

Petition for Leave to Appeal was: DENIED.

Very truly yours,
Clell L. Woods
Clerk of the Supreme Court

APPENDIX F

Ill. Rev. Stat., Ch. 24

§ 7-1-1. Change in territory

Any territory which is not within the corporate limits of any municipality but which is contiguous to a municipality, may be annexed thereto as provided in this Article.

No annexation, disconnection and annexation, or disconnection under this Article of territory having electors residing therein made (1) prior to any primary election to be held within the municipality affected thereby and after the time for filing petitions as a candidate for nomination to any office to be chosen at such primary election, or made (2) within 60 days prior to any general election to be held within such municipality, shall be effective until the day after the date of such primary or general election, as the case may be.

§ 7-1-2. Petition or ordinance for annexation—Filing—Notice—Fee—Restrictions on annexation

A written petition signed by a majority of the owners of record of land in such territory, and also by a majority of the electors, if any, residing in such territory, shall be filed with the county clerk of the county in which the territory is located, or the corporate authorities of any such municipality may initiate the proceedings by enacting an ordinance expressing their desire to annex such described territory; provided, no tract of land in excess of 10 acres in area may be included in the ordinances of a municipality initiating the proceedings without the express consent of the owner thereof unless the said tract (1) is subdivided into lots or blocks or (2) is bounded on at least 3 sides by lands subdivided into lots or blocks; a tract of land shall be deemed so bounded if it is actually separated from such subdivision only by the right-of-way of a rail-

road or other public utility or at a public highway. The petition or ordinance, as the case may be, shall request the annexation of the territory to a specified municipality and also shall request that the judge of the county court of the specified county submit the question of the annexation to the corporate authorities of the annexing municipality or to the electors of the unincorporated territory, as the case may be. The judge of the county court shall enter an order fixing the time for the hearing upon the petition and the day for the hearing shall be not less than 20 nor more than 30 days after the filing of the petition or ordinance, as the case may be.

The petitioners or corporate authorities, as the case may be, shall give notice of the annexation petition or ordinance, as the case may be, not more than 30 nor less than 15 days before the date fixed for the hearing. This notice shall state that a petition for annexation or ordinance, as the case may be, has been filed and give the substance thereof, including a description of the territory to be annexed, the name of the annexing municipality, and the date fixed for the hearing. This notice shall be given by publishing a notice thereof at least once in one or more newspapers published in the annexing municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the annexing municipality and territory. A copy of this notice shall be filed with the clerk of the annexing municipality.

The petitioners or corporate authorities, as the case may be, shall pay to the county clerk $10 as a filing and service fee, and no petition or ordinance, as the case may be, shall be filed until this fee is paid.

No petitioner shall have the right to withdraw from this petition except by consent of the majority of the other petitioners thereon, or where it is shown to the satisfaction of the court that the signature of the petitioner was obtained by fraud or misrepresentation.

Where a State charitable institution is situated upon a tract or tracts of land which lie partly within and partly without the corporate limits of any municipality, the corporate authorities of such municipality may, without any such petition or proceedings required by this Act, by resolution of such corporate authorities, with the written consent of the Director of Public Welfare of the State of Illinois, annex any part or all of such tracts lying without the corporate limits.

Where real estate owned by the State of Illinois, or any board, agency or commission thereof, is situated in unincorporated territory adjacent to a municipality, the corporate authorities of such municipality may annex any part or all of such real estate only with the written consent of the Governor of the State of Illinois or the governing authority of such board, agency or commission, without any such petition or proceedings required by this Article by resolution of such corporate authorities. 1961, May 29, Laws 1961, p. 576, § 7-1-2; 1961, Aug. 22, Laws 1961, p. 3788, § 1.

§ 7-1-3 Objections to petition

After the filing of the petition but not less than 5 days prior to the date fixed for the hearing, any interested person may file with the county clerk his objections (1) that the territory described in the petition or ordinance, as the case may be, is not contiguous to the annexing municipality, (2) that the petition is not signed by the requisite number of electors or property owners of record, (3) that the description of the territory contained in the petition or ordinance, as the case may be, is inadequate, or (4) that the objector's land is located on the perimeter of such territory, that he does not desire annexation, and that exclusion of his land will not destroy the contiguity of such described property with the annexing municipality. 1961.

§ 7-1-4. Hearing upon petition or ordinance—Order—Certification—Appeal

The cause shall be heard without further pleadings. At the hearing the objector may be heard in person or by counsel.

Prior to hearing evidence on the validity of the annexation petition or ordinance, the court shall hear and determine any objection under sub-paragraph (4) of Section 7-1-3. If the court is satisfied that such objection is valid, it shall order the petition or ordinance to be amended to eliminate such objector's land from the territory sought to be annexed. Thereafter upon this hearing the only matter for determination shall be the validity of the annexation petition or ordinance, as the case may be, and the decision of the court shall be final. All petitions shall be supported by an affidavit of one or more of the petitioners, or some one on their behalf, that the signatures on the petition represent a majority of the property owners of record and the owners of record of more than 50% of land in the territory described and a majority of the electors of the territory therein described. Petitions so verified shall be accepted as prima facie evidence of such facts. If the court finds that (1) the annexation petition is not signed by the requisite number of electors or property owners of record; or (2) that the described property is not contiguous to the annexing municipality; or (3) that the description is materially defective; or (4) that the petition or ordinance, as the case may be, is otherwise invalid, the county court shall dismiss the petition or ordinance, as the case may be.

But if the court finds that the petition or ordinance, as the case may be, is valid, the court shall (1) enter an order describing the territory to be annexed, (2) find that the petition or ordinance, as the case may be, conforms to this Article, and (3) direct that the question of annexation, be submitted to the corporate authorities of the annexing municipality or to the electors of the unincorporated territory, as the case may be, for final action. A certified copy of the order of the county court directing that the question of annexation be submitted to the corporate authorities shall be sent to the clerk of the annexing municipality.

Appeals shall lie from any final order of the county court as in other civil actions.

§ 7-1-7. Referendum in unincorporated territory

If the court finds that an annexation ordinance is valid, the county judge shall submit the question of annexation of the unincorporated territory to the electors thereof at a special election on a date to be fixed by the court within 60 days after entering the above order. The court shall establish and fix the boundaries of one or more precincts within such unincorporated territory, shall designate one polling place for each precinct, shall appoint 3 judges for each polling place, and shall fix their compensation at not to exceed $10 per day. The county clerk shall cause a notice of such election to be published at least 20 days prior thereto by one publication in some newspaper having general circulation in such territory. Such notice shall specify the purpose of the election with a description of such proposed district and the time and place for holding such election. All expenses in connection with such election shall be borne by the municipality. In all other respects, such election shall be conducted in accordance with Section

28-3 of the Election Code, as heretofore and hereafter amended.[1] If a majority of the electors favor annexation, the described territory shall, except as is otherwise provided in Section 7-1-1, thereupon be a part of the annexing municipality.

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[1] Chapter 46, § 28—3.

SUPREME COURT, U. S.

JAN 15 1969

JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1968.

No. 847

PEOPLE OF THE STATE OF ILLINOIS EX REL. WILLIAM I. LANDWER,

Petitioner,

vs.

VILLAGE OF NORTH BARRINGTON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Scheffer Press, Inc.—ANdover 3-6850

In The

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1968.

No. 847

PEOPLE OF THE STATE OF ILLINOIS EX. REL. WILLIAM I. LANDWER,

Petitioner,

vs.

VILLAGE OF NORTH BARRINGTON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This is a municipal annexation case where property which previously had been unincorporated was annexed to a Village created and existing under Illinois law. Contrary to the record and the facts, Petitioner implies that this is a zoning case. The record shows that no change in zoning occurred as a result of the annexation (R. C271) and the petitioner has not sought any change in zoning.

The issue which petitioner seeks to raise has been decided by this Court adversely to the petitioner in many cases and the Appellate Court of Illinois followed those cases.

The simple and complete answer to the petition in this case is the holding of this Court in *Hunter* v. *Pittsburg*, 207 U.S. 161, 177-179 (1907):

> "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be intrusted to them . . . . *The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rest in the absolute discretion of the State* . . . . The State, therefore, at its pleasure may modify or withdraw all such powers, ... expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. . . . Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burdens of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and *there is nothing in the Federal Constitution which protects them from these injurious consequences*" (emphasis supplied).

Following the rationale of this case, the United States Court of Appeals for the Sixth Circuit in *Detroit Edison Co.* v. *East China Township School District No. 3*, 378 F. 2d 225 (1967), Cert. denied, 389 U.S. 932, held that annexation procedure was a legislative matter not justiciable under the due process or equal protection clauses of the 14th Amendment. To the same effect are *Hammonds* v. *The City of Corpus Christi, Texas*, 343 F. 2d 162 (5th Cir. 1965), Cert. denied, 382 U.S. 837, and *International Harvester Company* v. *Kansas City*, 308 F. 2d 35, (10th Cir. 1962), Cert. denied, 371 U.S. 948. See also *Deane Hill Country Club, Inc.* v. *City of Knoxville*, 379 F. 2d 321 (6th Cir. 1967), Cert. denied, 389 U.S. 975.

Hunter v. *Pittsburg* cites fourteen decisions of this Court to support the proposition quoted above.

As recently as 1967, this Court again cited *Hunter* v. *Pittsburg* and reached the same result. *Sailors* v. *Kent Board of Education,* 387 U.S. 105 (1967).

It is relevant that Illinois law allows a property owner to subsequently question by *quo warranto* the validity of an annexation although that property owner did not appear at the court hearings where the annexation was approved. Ch. 112, Ill. Rev. Stat. Secs. 9-15; *People Ex. Rel. Jordan Company* v. *Village of Forest View,* 21 Ill. 2d 384 (1961).

CONCLUSION

It is respectfully submitted that there is no Federal question in this case and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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